

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	WT Docket No. 08-165
Petition for Declaratory Ruling to Clarify)	
Provisions of Section 332(c)(7)(B) to Ensure)	
Timely Siting Review and to Preempt under)	
Section 253 State and Local Ordinances that)	
Classify All Wireless Siting Proposals as)	
Requiring a Variance)	
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REPLY COMMENTS OF THE
CITY OF ALBUQUERQUE

These Reply Comments are filed by the City of Albuquerque, New Mexico (the City) in response to the specific allegations made by T-Mobile USA, Inc. (T-Mobile) concerning delays by the City. T-Mobile cites two examples of unreasonable delays by the City, one involving a collocation application and one involving an application for a new tower. T-Mobile provides incomplete and incorrect information for both examples.

T-Mobile alleges that it has taken 18 months to process an application seeking approval to collocate on an existing tower. A search of the City's master list of wireless telecommunications facility applications reveals no application by T-Mobile outstanding for 18 months. There is one pending collocation application that was submitted on November 20, 2007. This is far short of the 18 months alleged by T-Mobile so it is uncertain whether this is the application to which T-Mobile may be referring. T-Mobile

should be made to demonstrate the details of the 18-month timeframe to which it refers in order for the City to properly respond.

If this is the application in question, T-Mobile has caused at least some portion of the delay by failing to submit a complete application. The City has sent it three (3) deficiency notices as T-Mobile continues to provide incomplete paperwork. Some of the deficiency has been due to T-Mobile's failure to provide the data concerning its facilities' locations as required by the City's Ordinance. City Ordinance §14-16-3-17(A)(13)(a) ROA 1994 establishes that each applicant is to provide a one-time inventory set of data of all the provider's and/or owner's existing facilities. The City does not act on an incomplete application but provides the applicant with a deficiency notice in an attempt to remedy the deficiency. T-Mobile has yet to provide this data. The City's Ordinance requires an administrative review time not to exceed sixty (60) days for a complete application. If T-Mobile would submit a complete application, it would not experience any delay, much less the unreasonable delay it alleges.

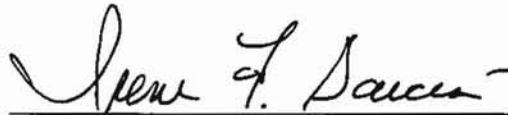
As for the new tower application, T-Mobile's comments misrepresent even its own employee's declaration. Mr. Christopher Eldridge states that: "For one raw land site, T-Mobile filed an application and, although not required by ordinance, the City of Albuquerque *requested* T-Mobile meet with a facilitator, hold an open meeting and invite surrounding homeowner associations. . . ." (emphasis added) The Comments changed this to "*required*," thereby conveying that the City had forced this additional time period on the applicant. City staff *suggested* the facilitated meeting, as is typical of the land development process in the City, in an effort to enable communication with the neighbors who were already expressing significant concern about this particular application.

While T-Mobile's comments reference unreasonable delay, the alleged problem needs to be placed in context. T-Mobile continually submits applications that are not approvable under the City's Ordinance. No matter how short or long the City takes, such applications cannot be approved because they do not comply with the City's Ordinance. T-Mobile's site acquisition specialists need to choose sites that will be legal and approvable under the City's Ordinance. The Ordinance allows many opportunities for facilities that would be approved. T-Mobile routinely submits monopine designs to be placed on sites where existing buildings, structures or landscaping do not help to conceal it. The facility is not aesthetically integrated with its surroundings. The City cannot be responsible for T-Mobile's failure to submit applications that appropriately apply the City's Zoning Ordinance such that approval would be expeditious with no basis for either denial or appeal by the homeowners and/or neighborhood associations in proximity to the site. The conditions placed in the ordinance concerning architectural integration and concealment are reasonable. T-Mobile has the opportunity to submit applications that could easily be approved without unreasonable delays.

As the City pointed out in its Comments filed on September 29, 2008, the average time between submitting an application for most land use matters and a final decision by the City's Environmental Planning Commission (EPC) has been twelve (12) weeks. This time may be extended when the applicant seeks a deferral or the EPC votes for a deferral to resolve outstanding issues. Based on 2007 data, collocations take an average of two (2) months. Because they are more controversial, free-standing towers take an average of five (5) months. This is not indicative of a delay, much less an unreasonable delay as suggested in T-Mobile's Comments.

In summary, T-Mobile's Comments are inaccurate in its representation of the facts. If complete applications for appropriate and compliant sites were provided, there would be no delay, let alone the type of delay alleged to be unreasonable in T-Mobile's Comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Irene F. Garcia", written over a horizontal line.

IRENE F. GARCIA, CHIEF OPERATIONS OFFICER
CITY OF ALBUQUERQUE
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October 14, 2008

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10 Provisions of Section 332(c)(7)(B) to Ensure)
11 Timely Siting Review and to Preempt under) DECLARATION OF
12 Section 253 State and Local Ordinances that) CATALINA LEHNER
13 Classify All Wireless Siting Proposals as) IN SUPPORT OF THE
14 Requiring a Variance) CITY OF ALBUQUERQUES
15) REPLY COMMENTS IN
16) OPPOSITION TO THE
17) PETITION
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19

20 I, Kathie L. "Catalina" Lehner, declare as follows:

- 21 1. I am employed by the City of Albuquerque as a Senior Planner in the
22 Development Review Division of the City Planning Department. In this position,
23 one of my duties is to review applications for wireless telecommunications
24 facilities that are on sites zoned Special Use (SU-1), Industrial Park (IP) or
25 Shopping Center (SC) and/or are considered a concealed design by the industry. I
26 have been in this position since 2005, and assumed this duty in 2006.
- 27 2. I maintain a master list of applications for wireless telecommunications facilities.
28 A review of this list reveals no application for collocation of a facility that has
29 been outstanding for eighteen months.
- 30 3. T-Mobile USA, Inc. has failed to provide the one-time inventory set of data of all
31 the provider's and/or owner's existing facilities as required by City Ordinance
32 §14-16-3-17(A)(13)(a) ROA 1994. Any application that is submitted without this

33 information having been provided is an incomplete application upon which the
34 City cannot take action.

- 35 4. T-Mobile USA, Inc.'s on-going attempts to submit applications for monopines on
36 sites where existing buildings, structures or landscaping do not help to conceal
37 them, do not allow for such facilities to be integrated with their surroundings.
38 Such applications are continually causing problems and delays, when submission
39 of complete applications with a design that is more appropriate for a given context
40 could be approved without unreasonable delays.

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43 Executed this 14th day of October, 2008 in Albuquerque, New Mexico.
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45 *Kathie L. "Catalina" Lehner*
46 Kathie L. "Catalina" Lehner
47 *Lehner*